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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,780	08/18/2003	Judith K. Laffoon	3250	3687

7590 01/09/2004

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EXAMINER

ALIMENTI, SUSAN C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 01/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

## Application No.

10/642,780

## Applicant(s)

LAFFOON, JUDITH K.

## Examiner

Susan C. Alimenti

## Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 6, 7 and 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiesel (US 6,209,134), in view of Schellenbach (US 6,450,126).

3. Schiesel discloses the claimed invention as cited in claims 1, 3, 4, 7, 11-12 and 15-17 except there 1.) is not a pair of pads 24 located in a parallel relationship on a top surface of the garment and 2.) said pads 24 are not generally cylindrical.

Regarding the aforementioned claims and item #1 above, Schiesel discloses an animal care garment 10 comprising a front panel 20, a back panel 22, a neck opening there between 38, a means for receiving food or waste 30, means for carrying small animals 28, 30 and a pad 24 serving as a perch area for a variety of birds. Schellenbach discloses an animal care garment in the same field of invention also comprising a similar shoulder perch 52. Schellenbach teaches that plurality of perches could be utilized and placed parallel to one another providing versatility for the bird as it changes position. It is also taught that the size may vary to accommodate different bird grip sizes, therefore it is taught that a plurality of smaller perches could be placed thereon the shoulder area (Schellenbach, col.6, lns.31-49). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add another perch area to Schiesel's device in order to provide more room for the bird to change its position.

Regarding the aforementioned claims and item #2 above, Schiesel discloses the claimed invention except pad 24 is not expressly disclosed as being generally cylindrical. It is noted that a generally cylindrical perch is a well-known shape in the art as shown by Schelllenbach's shoulder perch 52. Furthermore it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the perch generally cylindrical since it has been held that there is no invention in merely changing the shape or form of an article without changing its function except in a design patent. Eskimo Pie Corp. v. Levous et al., 3 USPQ 23.

4. Regarding claims 2, 13 and 14, and the above discussion Schiesel, as modified, discloses the claimed invention except the means for attaching an object to the garment 36A-C, is not positively disclosed as extending from one of said top surfaces. Schellener, however, shows object 60 extending from a top surface 20. Furthermore it is noted that it would have been obvious to one having ordinary skill in the art at the time the invention was made to attach an object to the top surface of Schiesel's garment since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

5. Finally regarding claims 6 and 10, Schiesel, as modified, discloses the claimed invention except the preferred material of pads 24 is not positively stated, it is only stated that they provide a grip for the animal and padding for the user. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a polymer foam to make pads 24, since the Examiner takes Official Notice that polymer foam is commonly used as a padding material in the art and the selection of this material would be within the level of ordinary skill in the art.

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6. Claims 5 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiesel in view of Schellenbach as applied to claims 1-4, 6, 7 and 10-17 above, and further in view of Garay et al. (US 5,315,957).

Schiesel, as modified discloses the claimed invention except the preferred material of perch pad 24 is not positively stated to be made of rope. Garay et al. discloses a perch made from a rope material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Schiesel's garment by making the perch pad 24 with a rope as it is a resilient durable material suitable for the intended purposes.

Regarding claim 9, it is noted that Garay's rope is not synthetic but instead a natural material, however it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a synthetic material instead of a natural in order to increase the life and durability of said perch.

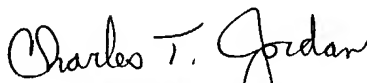
### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 703-306-0360. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

SCA

  
CHARLES T. JORDAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600